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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,876	03/26/2004	Terry Keith Bryant		9847
7590	04/06/2005			
<b>TERRY KEITH BRYANT</b> 1281 EAST BLUE HERON BLVD. SINGER ISLAND, FL 33404			EXAMINER	
			NATNITHITHADHA, NAVIN	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/810,876	BRYANT, TERRY KEITH	
	<b>Examiner</b>	<b>Art Unit</b>	
	Navin Natnithithadha	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 31 January 2005.

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 3-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 18-21 is/are allowed.

6)  Claim(s) 3-8 and 12 is/are rejected.

7)  Claim(s) 9-11 and 13-17 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 20 July 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 01312005.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. The specification has been amended.
2. Claims 1 and 2 were cancelled.
3. Claims 3-21 were added.
4. Claims 3-21 are pending.

***Specification***

5. The disclosure is objected to because of the following informalities:

In the last sentence of page 18, "The provides the ability" appears to be a typographical error in which a word is missing.

Appropriate correction is required.

***Claim Objections***

6. Claim 10 is objected to because of the following informalities:

It appears claim 10 should be dependent on claim 9 because the claim states a photosensor that would be associated with detecting the level of darkness or light, which is stated in claim 9. The Examiner has interpreted claim 10 to be dependent on claim 9. In addition, it is not clear how a photosensor can be a "means for preventing" according to claim 8. It appears claim 10 should be amended to state the photosensor

can detect "the level of darkness or light in a room" as stated in claim 9. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessel, US 2003/0050537 A1, in view of Niles et al, US 6,656,129 B2.

In regards to claims 3, 4, and 12, Wessel discloses interactive device 10 providing pre-programmed voice/audio messages to motivate or encourage the patient to conduct medical tests and/or maintain medical test results within certain levels (see abstract, paragraph [0047], [0050], and claim 60). Wessel discloses the device 10 can be used with a "medical device" in general (see paragraph [0008]). Wessel does not disclose interactive device 10 for use with an incentive spirometer to perform a sustained maximal inspiration procedure. However, Niles discloses an incentive spirometer 100, which provides feedback to patients performing a sustained maximal inspiration excercises (see see fig. 1 and col. 1, lines 11-16) by providing a visual feedback 89 (i.e. a smiling face target). It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of Wessel

and Niles because Wessel teaches using the interactive device 10 for encouraging compliance with medical monitoring or treatment.

As to claim 5, Wessel discloses motivation circuitry (electronic assembly) 125, a speaker 40, a power supply (means for powering said electronic assembly) 120, a microcontroller (microcontroller unit) 135, memory (audio storage unit) 105 for storing pre-programmed, voice/audio messages used for encouragement (see paragraph [0050]).

As to claims 6-8, Wessel teaches using pre-programmed messages to provide a reward-based incentive device operably coupled with the medical testing device, and means for correlating how well a patient follows a testing regimen or achieves a certain medical test result using the device with a reward level provided to the patient by the device (see paragraph [0010]).

***Allowable Subject Matter***

8. Claims 18-21 are allowed.
9. Claims 9-11 and 13-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. The following is a statement of reasons for the indication of allowable subject matter:

In regards to claims 13-21, the prior art of record does not teach an incentive spirometer apparatus, comprising: a means for producing a verbal prompting, indicating,

or responding to a user a measurement achieved by the user from the user's performance of a sustained maximal inspiration procedure; wherein the volumetric flowrate measurement is done by an assembly, including: a first conductive element disposed along a first portion of an inner wall; a second conductive element disposed along a second portion of the inner wall; a third conductive element disposed on a float member; wherein the point of communication between third conductive element and the second conductive element produces a measurement reading in correlation with the float rising within the interior area.

As to claims 9 and 10, the prior art of record does not teach an incentive spirometer assembly including a means for preventing the microcontroller unit from directing the audio storage unit to send verbal messages during certain conditions, wherein the certain conditions is level of darkness or light in a room to provide the user with a sleep period without disturbance from the means for verbally prompting, wherein the means for preventing is a photosensor.

As to claim 11, the prior art of record does not teach an incentive spirometer assembly including a means for preventing the microcontroller unit from directing the audio storage unit to send verbal messages during certain conditions, wherein the means for preventing is a deactivation key assembly in communication with the microcontroller unit which prevents the user from turning the means for verbally prompting on and off.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mault, US 6,620,106 B2 teaches an incentive spirometer which provides audio feedback to encourage more regular breathing, longer breaths, or other desirable respiratory parameters or behavior modifications (see col. 4, lines 43-49).

The other US Patents listed on the PTO-892 are reference that further define the prior art related to incentive spirometer devices.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Navin Natnithithadha  
Patent Examiner  
GAU 3736  
March 25, 2005

  
Robert & Nason  
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